

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	4:CR-00-0281
v.	:	
	:	
WILLIAM R. BRUCE, III, and	:	(Judge Muir)
JOHN CIOFFI MUSSARE, III	:	

ORDER

June 10, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The vast majority of this order's background is set forth in our order of June 1, 2005, in which we denied the Defendants' motions to void the briefing schedules and sentencing dates we established in a prior order dated April 29, 2005. We repeat and supplement the background of the June 1, 2005, order only to the extent necessary to rule on Defendant John Cioffi Mussare, III's, motion filed on June 9, 2005, to rescind our order of June 1, 2005. Defendant William R. Bruce, III, and the government concur in the motion. We issue this order, as opposed to simply signing Mussare's proposed order, to explain the facts upon which we relied in issuing our order of June 1, 2005.

The current status of the case in this court is that a schedule has been set for sentencing briefs and dates and times set for sentencing the Defendants. In the motions denied in our June 1, 2005, order, the Defendants had effectively sought a stay of this case because they represented that appeals of their

convictions and sentences remained pending in the Court of Appeals for the Third Circuit. Although three-judge panels had affirmed their convictions and remanded the cases to this court for re-sentencing in the light of United States v. Booker, ___ U.S. ___, 125 S. Ct. 738 (2005), the Defendants asserted that by May 26, 2005, they would file a petition for rehearing *en banc*.

On May 27, 2005, and May 31, 2005, we accessed the appellate dockets in the Defendants' cases via the appellate court's internal internet web site. On both occasions the docket indicated that the most recently filed document had been the motion for an extension of time to May 26, 2005, to file the petition for rehearing *en banc*. When we viewed the docket in the late afternoon of May 31, 2005, no petition for rehearing *en banc* was shown as having been filed on or before May 26, 2005, and the docket indicated that it was current "as of May 31, 2005." Our order of June 1, 2005, was based on that information.

Attached to the Defendants' pending motion filed on June 9, 2005, is a docket sheet clearly showing that a petition for rehearing *en banc* had been filed on May 26, 2005. That document prompted us to telephone the Court of Appeals for the Third Circuit to determine why the information upon which we relied as of May 31, 2005, failed to reflect the filing on May 26, 2005, of the petition for rehearing *en banc*.

During the conversation with a member of the staff of the

Clerk of Court for the Court of Appeals for the Third Circuit, we learned for the first time that although the document was physically received by the Court of Appeals for the Third Circuit on May 26, 2005, the document was not entered on the docket until June 1, 2005. The notation we viewed on May 31, 2005, stating that the information in the docket was current "as of May 31, 2005," was inaccurate.

We will grant Mussare's motion to rescind our order of June 1, 2005. In addition, the circumstances further justify the relief sought by the Defendants in the motions denied in the order of June 1, 2005. We will grant those motions as well.

As a result of granting those motions, there is no date set for the next milestone in this case. We will require the Defendants to file status reports to ensure that the matter proceeds as expeditiously as possible.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Mussare's motion (Document 389) to rescind our order of June 1, 2005, is granted.
2. Mussare's motion (Document 386) to rescind our order of April 29, 2005, is granted.
3. Bruce's motion (Document 387) to vacate our order of April 29, 2005, is granted.
4. Our order of June 1, 2005, is rescinded.
5. Our order of April 29, 2005, is rescinded.

6. The Defendants shall, on July 1, 2005, and on the first working day of each month thereafter, file a status report in this case.

s/Malcolm Muir
MUIR, U.S. District Judge

MM:ga